

HOUSE BILL NO. 568

INTRODUCED BY D. ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REQUIREMENTS FOR A DIVERSION PROGRAM FOR IMPAIRED PRACTITIONERS LICENSED BY THE BOARD OF MEDICAL EXAMINERS OR THE BOARD OF DENTISTRY; ESTABLISHING CRITERIA FOR ADMISSION TO AND TERMINATION FROM THE PROGRAM; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-3-201, 37-3-203, 37-3-208, 37-3-401, 37-4-201, 37-4-205, 37-4-311, AND 37-4-312, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Diversion program for impaired practitioners. (1) The board shall establish and administer a diversion program for the rehabilitation of licensees whose ability to function is impaired because of the abuse of alcohol or drugs.

(2) The board may:

(a) contract with another state agency or a private entity to perform the duties required in [sections 1 through 6];

(b) designate a person to act as the diversion program manager; and

(c) establish one or more diversion evaluation committees to assist in carrying out the duties under [sections 1 through 6], operating under the direction of the diversion program manager.

(3) The diversion program manager shall review and evaluate recommendations of a diversion evaluation committee for presentation to the board.

NEW SECTION. Section 2. Diversion evaluation committee -- makeup -- duties. (1) A diversion evaluation committee established by the board must have at least three members, none of whom are members of the board. In making appointments, the board shall consider appointing individuals who are:

(a) recovering from substance abuse and have been free from abuse for at least 3 years immediately prior to appointment;

(b) knowledgeable in the treatment of and recovery from substance abuse; or

(c) licensed psychiatrists.

(2) Appointees must be selected by a majority vote of the board.

(3) Appointees serve at the pleasure of the board for a term not to exceed 4 years. The board may stagger the terms of the members initially appointed to a diversion evaluation committee.

(4) A diversion evaluation committee shall elect a presiding officer and a vice presiding officer from among the members.

(5) A diversion evaluation committee shall:

(a) evaluate licensees of the board who request participation in the diversion program;

(b) make recommendations to the diversion program manager on whether a licensee should be accepted into the program, taking into consideration any available recommendations from professional consultants;

(c) review and designate treatment facilities to which licensees participating in the program may be referred;

(d) receive and review information on licensees who are participating in the program;

(e) consider whether a participant in the diversion program may safely continue or resume the practice of medicine;

(f) develop written terms and conditions for a diversion agreement with a licensee that includes treatment, supervision, and monitoring requirements and that is approved by the diversion program manager;

(g) meet at least twice a year in a public meeting to evaluate the diversion program's progress, prepare reports to be submitted to the board, and suggest proposals for changes to the diversion program; and

(h) meet as necessary to:

(i) consider the requests of licensees to participate in the diversion program;

(ii) consider reports regarding participants in the program; and

(iii) consider any other matters referred by the board.

(6) Committee members must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503.

NEW SECTION. Section 3. Acceptance into diversion program. (1) An individual may be accepted into the diversion program only if the individual:

(a) is licensed by the board and is a Montana resident;

(b) is found to abuse alcohol or drugs in a manner that may affect the individual's ability to practice the individual's profession safely or competently;

(c) has voluntarily requested admission to the program or is accepted into the program in accordance with terms and conditions resulting from a disciplinary action;

(d) agrees to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program;

(e) cooperates with the diversion program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation; and

(f) agrees in writing to cooperate with all elements of the planned treatment program.

(2) An individual may be denied participation in the diversion program if the board, the diversion program manager, or a screening panel determines that the individual will not substantially benefit from participation or that the individual's participation creates too great a risk to the public health, safety, or welfare.

NEW SECTION. Section 4. Termination from diversion program. (1) A licensee participating in the program may be terminated from the program for any of the following reasons:

(a) successful completion of the program;

(b) failure to comply with the designated treatment program;

(c) a determination that the participant has not substantially benefited from participation in the program;

or

(d) a determination that the participant's continued participation in the program creates too great a risk to the public health, safety, or welfare.

(2) The board shall provide information to each participant in the program of the procedures to be followed in the program, the rights and responsibilities of program participants, and the possible results of noncompliance with the program.

NEW SECTION. Section 5. Diversion -- causes for disciplinary action. (1) The board must be notified when an individual is not accepted into the program or is terminated from the program and the screening panel or diversion program manager determines that the continued practice of medicine by the individual creates too great a risk to the public health, safety, or welfare. All documents and information pertaining to and supporting the conclusion must be provided to the board.

(2) The matter may be referred for investigation and disciplinary action by the board.

(3) Participation in a diversion program is not a defense to any disciplinary action taken by the board.

(4) A disciplinary action by the board may not include as evidence any confidential information.

NEW SECTION. Section 6. Diversion program contract requirements. If the board contracts with another entity for the diversion program established in [sections 1 through 6], the executive director of the board or the diversion program manager shall review the activities and performance of the contractor on a biennial basis. The board's review must include a review of files of diversion program participants. The names of participants who entered the program voluntarily must remain confidential unless the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

Section 7. Section 37-3-201, MCA, is amended to read:

"37-3-201. Organization. (1) (a) The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary.

(b) The board shall adopt a seal on which appear the words "The Board of Medical Examiners of Montana" and "Official Seal". The board shall authenticate acts, rules, orders, and licenses by applying the seal.

(2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee ~~any~~ a rehabilitation program established pursuant to 37-3-203(6)."

Section 8. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) adopt rules as necessary to implement the diversion program provided for in [sections 1 through 6], including but not limited to:

(a) criteria for admission to the program;

(b) reasons for termination from the program; and

(c) the fee, if any, to be charged for participation in the program;

~~(2)(3)~~ hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

~~(3)(4)~~ aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of

1 this chapter;

2 ~~(4)(5)~~ establish a program as provided in [sections 1 through 6] to assist and rehabilitate licensees who
3 are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual
4 intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance ~~or~~;

5 (6) establish a program to assist and rehabilitate licensees who are found to be physically or mentally
6 impaired by mental or chronic physical illness;

7 ~~(5)(7)~~ review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle
8 as provided in 87-2-803(11); and

9 ~~(6)(8)~~ fund additional staff, hired by the department, to administer the provisions of this chapter, by
10 increasing license fees as necessary."
11

12 **Section 9.** Section 37-3-208, MCA, is amended to read:

13 **"37-3-208. Confidentiality of information -- physician licensee assistance program.** (1) The
14 proceedings and records of the ~~program~~ programs created by the board pursuant to ~~37-3-203(4)~~ 37-3-203(5) and
15 (6) relating to a physician licensee who has received assistance from the ~~program~~ programs are considered to
16 be proceedings and records of a professional standards review committee under 37-2-201 and are not subject
17 to discovery or introduction into evidence in any administrative or judicial proceeding, except that the proceedings
18 and records of the program as they pertain to a physician licensee are subject to discovery or introduction into
19 evidence in a disciplinary proceeding before the board against the physician licensee.

20 (2) Proceedings and records of the ~~program~~ programs created by the board pursuant to ~~37-3-203(4)~~
21 37-3-203(5) and (6) do not include health care information, as defined in 50-16-803, maintained by a health care
22 provider in the provision of health care services to a physician licensee who is receiving or has received
23 assistance from the program. The health care information is subject to discovery from the physician licensee or
24 health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise
25 be allowed by law."
26

27 **Section 10.** Section 37-3-401, MCA, is amended to read:

28 **"37-3-401. Report of incompetence or unprofessional conduct.** (1) Notwithstanding any provision
29 of state law dealing with confidentiality, each ~~licensed physician~~ licensee, professional standards review
30 organization, and the Montana medical association or any component society of the association shall and any

other person may report to the board any information that the ~~physician licensee~~, organization, association, society, or person has that appears to show that a ~~physician licensee~~ subject to the jurisdiction of the board is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee ~~or may be reported to the appropriate personnel of the program established under [sections 1 through 6] in lieu of reporting directly to the board.~~

(b) Information that relates to possible physical or mental impairment connected to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under ~~37-3-203(4)~~ 37-3-203(6); in lieu of reporting directly to the board.

~~(b)(c)~~ The program personnel referred to in this subsection ~~(2)(a)~~ (2) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

Section 11. Section 37-4-201, MCA, is amended to read:

"37-4-201. Official seal -- organization -- subpoena power -- screening panel. (1) (a) The board shall adopt an official seal of its own design and shall employ the seal to authenticate the board's acts and records.

(b) The board shall, at its annual meeting, choose from its members a president, vice-president, and

1 secretary-treasurer, who shall serve at the pleasure of the board.

2 (c) Any member of the board may administer oaths and affirmations, and the board may hear testimony
3 and subpoena witnesses with respect to matters relating to the duties imposed upon the board by law.

4 (2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and
5 shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-4-311(1)."
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7 **Section 12.** Section 37-4-205, MCA, is amended to read:

8 **"37-4-205. Rulemaking.** The board may adopt, amend, or repeal rules necessary for the
9 implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative
10 Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

11 (1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

12 (2) advertising by a licensed dentist including:

13 (a) the use of false, deceptive, or misleading advertising;

14 (b) the use of information concerning fees, areas of practice, specialization, personal background, and
15 quality of service in advertising; and

16 (c) the use of warnings and disclaimers in advertising; and

17 (3) implementation of the diversion program provided for in [sections 1 through 6], including but not
18 limited to:

19 (a) criteria for admission to the program;

20 (b) reasons for termination from the program; and

21 (c) the fee, if any, to be charged for participation in the program."
22

23 **NEW SECTION. Section 13. Confidentiality of information -- licensee assistance programs.** (1)

24 The proceedings and records of the programs created by the board pursuant to 37-4-311 relating to a licensee
25 who has received assistance from the programs are considered to be proceedings and records of a professional
26 standards review committee under 37-2-201 and are not subject to discovery or introduction into evidence in any
27 administrative or judicial proceeding, except that the proceedings and records of the program as they pertain to
28 a licensee are subject to discovery or introduction into evidence in a disciplinary proceeding before the board
29 against the licensee.

30 (2) Proceedings and records of the programs created by the board pursuant to 37-4-311 do not include

health care information, as defined in 50-16-803, maintained by a health care provider in the provision of health care services to a licensee who is receiving or has received assistance from the program. The health care information is subject to discovery from the licensee or health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

Section 14. Section 37-4-311, MCA, is amended to read:

"37-4-311. Rehabilitation. (1) The board shall establish a protocol for the referral to a board-approved rehabilitation program for licensees subject to the jurisdiction of the board who are found to be physically or mentally impaired ~~by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance~~ or by mental illness or chronic physical illness.

(2) The board shall establish a program as provided in [sections 1 through 6] for licensees subject to the jurisdiction of the board who are found to be physically or mentally impaired by habitual intemperance or the excessive use of drugs, alcohol, or any other drug or substance."

Section 15. Section 37-4-312, MCA, is amended to read:

"37-4-312. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensee, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the licensee, organization, association, society, or person has that appears to show that a licensee is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee ~~or~~ may be reported to the appropriate personnel of the program established under [sections 1 through 6] in lieu of reporting directly to the board.

(b) Information that relates to possible physical or mental impairment connected to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program endorsed by the board under 37-4-311(1) in lieu of reporting directly to the board.

~~(b)(c)~~ (c) The program personnel referred to in this subsection ~~(2)(a)~~ (2) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

1 (i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental,
2 physical, or chemical dependency evaluation or a combination of evaluations;

3 (ii) the licensee fails or refuses to undergo a reasonable course of treatment that the program personnel
4 recommend, including reasonable aftercare;

5 (iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment,
6 or aftercare; or

7 (iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

8 (3) This section applies to professional standards review organizations only to the extent that the
9 organizations are not prohibited from disclosing information under federal law."
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11 **NEW SECTION. Section 16. Codification instruction.** (1) [Sections 1 through 6] are intended to be
12 codified as an integral part of Title 37, chapter 3, and Title 37, chapter 4, and the provisions of Title 37, chapters
13 3 and 4, apply to [sections 1 through 6].

14 (2) [Section 13] is intended to be codified as an integral part of Title 37, chapter 4, part 2, and the
15 provisions of Title 37, chapter 4, part 2, apply to [section 13].
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